

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36707, July 9, 1997, unless otherwise noted.

#### 1819.001 Definitions.

*High-Tech* as used in this part means research and/or development efforts that are within or advance the state-of-the-art in a technology discipline and are performed primarily by professional engineers, scientists, and highly

skilled and trained technicians or specialists.

#### Subpart 1819.2—Policies

#### 1819.201 General policy. (NASA supplements paragraphs (a), (c), (d), and (f))

(a)(i) NASA is committed to providing to small, veteran-owned small business, service-disabled veteran-owned small business, HUBZone, small disadvantaged, and women-owned small business concerns, maximum practicable opportunities to participate in Agency acquisitions at the prime contract level. The participation of NASA prime contractors in providing subcontracting opportunities to such entities is also an essential part of the Agency's commitment. The participation of these entities is emphasized in high-technology areas where they have had low involvement level.

(ii) NASA biennially negotiates Agency small business prime and subcontracting goals with the Small Business Administration pursuant to section 15(g) of the Small Business Act (15 U.S.C. 644). In addition, NASA has an annual goal of five percent for prime and subcontract awards to small disadvantaged businesses (SDBs) and women-owned small businesses (WOSBs), and a three percent goal for HUBZone and service-disabled, veteran-owned small business concerns.

[62 FR 36707, July 9, 1997, as amended at 64 FR 25215, May 11, 1999; 65 FR 38777, June 22, 2000; 65 FR 58932, Oct. 3, 2000; 67 FR 53947, Oct. 23, 2001; 69 FR 21765, Apr. 22, 2004; 80 FR 12938, Mar. 12, 2015]

#### 1819.302 Protesting a small business representation or rerepresentation.

(h) When the contracting officer determines in writing that an award must be made to protect the public interest, the contracting officer shall notify the Headquarters Office of Procurement, Program Operations Division, the Headquarters Office of Small Business Programs, and the SBA.

[80 FR 12938, Mar. 12, 2015]

## National Aeronautics and Space Administration

1819.7201

### Subpart 1819.7—The Small Business Subcontracting Program

#### 1819.708 Contract clauses. (NASA supplements paragraph (b))

(b)(1) The contracting officer shall use the clause at FAR 52.219-9 with its Alternate II when contracting by negotiation.

#### 1819.708-70 NASA solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 1852.219-73, Small Business Subcontracting Plan, in invitations for bids containing the clause at FAR 52.219-9 with its Alternate I. Insert in the last sentence the number of calendar days after request that the offeror must submit a complete plan.

(b) The contracting officer shall insert the clause at 1852.219-75, Individual Subcontracts Reporting, in solicitations and contracts containing the clause at FAR 52.219-9, except for contracts covered by an approved commercial subcontracting plan.

[64 FR 25215, May 11, 1999, as amended at 80 FR 12938, Mar. 12, 2015]

#### 1819.811-3 Contract clauses.

(a) The contracting officer shall insert the clause at 1852.219-11, Special 8(a) Contract Conditions, in contracts and purchase orders awarded directly to the 8(a) contractor when the acquisition is accomplished using the procedures of FAR 19.811-1(a) and (b).

(d) The contracting officer shall insert the clause at 1852.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of FAR 19.805.

(1) The clause at 1852.219-18 with Alternate I to the FAR clause at 52.219-18 will be used when competition is to be limited to 8(a) concerns within one or more specific SBA districts pursuant to FAR 19.804-2.

(2) The clause at 1852.219-18 with Alternate II to the FAR clause at 52.219-18 will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see FAR 19.102(f)(4) and (5)).

(e) Follow the prescription at FAR 19.811-3(e).

[80 FR 12938, Mar. 12, 2015]

### Subpart 1819.10 [Reserved]

### Subparts 1819.70—1819.71 [Reserved]

### Subpart 1819.72—NASA Mentor-Protégé Program

SOURCE: 74 FR 25672, May 29, 2009, unless otherwise noted.

#### 1819.7201 Scope of subpart.

(a) This subpart implements the NASA Mentor-Protégé Program (hereafter referred to as the Program) established under the authority of Title 42, U.S.C., 2473(c)(1). The purpose of the Program is to:

(1) Provide incentives to NASA contractors, performing under at least one active, approved subcontracting plan negotiated with NASA, to assist protégés in enhancing their capabilities to perform as viable NASA contractors, other Government contractors, and commercial suppliers on contract and subcontract requirements.

(2) Increase the overall participation of protégés as subcontractors and suppliers under NASA contracts, other Federal agency contracts, and commercial contracts; and

(3) Foster the establishment of long-term business relationships between protégés and mentors.

(b) Under the Program, eligible entities approved as mentors will enter into mentor-protégé agreements with eligible protégés to provide appropriate developmental assistance to enhance the capabilities of the protégés to perform as subcontractors and suppliers. NASA may provide the mentor award fee incentives. Additionally, this subpart explains the calculated subcontracting credit for a mentor-protégé program pursuant to FAR 52.219-9, Small Business Subcontracting Plan.

[74 FR 25672, May 29, 2009, as amended at 80 FR 12938, Mar. 12, 2015]

**1819.7202 Eligibility.**

(a) Eligibility of Mentors: To be eligible as a mentor, an entity must be—

(1) A large prime contractor performing with at least one approved subcontracting plan, other than a commercial plan, negotiated with NASA, pursuant to FAR Subpart 19.7, the Small Business Subcontracting Program. A contractor may apply to become a mentor if they currently are not performing under a NASA contract as long as they are currently performing another Federal agency contract with an approved subcontracting plan. The NASA mentor-protégé agreement, however, will not be approved until the mentor company is performing under a NASA contract with an approved subcontracting plan; and

(2) Eligible for receipt of Government contracts. An entity will not be approved for participation in the Program if, at the time of submission of the application to the Headquarters Office of Small Business Programs, the entity is currently debarred or suspended from contracting with the Federal Government pursuant to FAR Subpart 9.4, Debarment, Suspension, and Ineligibility.

(b) Eligibility of Protégés: To be eligible to participate as a protégé, an entity must be—

(1) Classified as a Small Disadvantaged Business (SDB), a small disadvantaged business, a women-owned small business, a historically underutilized business zone concern, a veteran-owned, service-disabled small business, a historically black college and university, or a minority institution. The protégé entity may also be an active NASA SBIR/STTR Phase II company, or an entity participating in the AbilityOne program.

(2) Eligible for the award of Federal contracts; and

(3) A small business according to the Small Business Administration (SBA) size standard for the North American Industry Classification System (NAICS) code that represents the contemplated supplies or services to be provided by the protégé to the mentor.

(c) A protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (b) of this section. Mentors may rely in

good faith on written representations by potential protégés that they meet the specified eligibility requirements.

[80 FR 12938, Mar. 12, 2015]

**1819.7203 Mentor-protégé advance payments.**

If advance payments are contemplated, the mentor must first have the advance payments approved by the contracting officer in accordance with FAR Subpart 32.4, Advance Payments for Non-commercial items.

[80 FR 12938, Mar. 12, 2015]

**1819.7204 Agreement submission and approval process.**

(a) To participate in the Program, entities approved as mentors in accordance with 1819.7203, will submit a complete agreement package to the Contracting Officer who will forward the completed agreement package to the cognizant Small Business Specialist at the NASA Center. The submission package must include the following—

(1) A signed mentor-protégé agreement;

(2) A signed protégé application;

(3) The estimated cost of the technical assistance to be provided, broken out per year and per task, in a separate cost volume; and

(4) Additional information as may be requested by the NASA OSBP; and

(5) A signed letter of endorsement of the agreement by the contracting officer and the contracting officer representative.

(b) The mentor-protégé agreement must be approved by the Assistant Administrator, NASA OSBP, prior to the mentor incurring eligible costs for developmental assistance provided to the protégé.

(c) The cognizant NASA center will issue a contract modification, if justified, prior to the mentor incurring costs for developmental assistance to the protégé.

[80 FR 12938, Mar. 12, 2015]

**1819.7205 Award Fee Pilot Program.**

(a) Mentors will be eligible to earn a separate award fee associated with the provision of developmental assistance to NASA SBIR/STTR Phase II Protégés only. The award fee will be assessed at

the end of the Mentor-Protégé agreement period.

(b) The overall developmental assistance performance of NASA contractors, in promoting the use of small businesses as subcontractors, will be a required evaluation factor in award fee plans.

(c) Evaluation criteria to determine the award fee should include:

(1) Benefit of the agreement to NASA;

(2) Active participation in the Program;

(3) The amount and quality of developmental assistance provided;

(4) Subcontracts awarded to small businesses and others;

(5) Success of the protégés in increasing their business as a result of receiving developmental assistance; and

(6) Accomplishment of any other activity as related to the mentor-protégé relationship.

(d) The Award Fee Pilot Program is an addition to the credit agreement. Participants that are eligible for award fee may also receive credit under their individual contract's award fee plan.

[80 FR 12938, Mar. 12, 2015]

#### **1819.7206—1819.7211 [Reserved]**

#### **1819.7212 Reporting requirements.**

(a) Mentors must report on the progress made under active mentor-protégé agreements semiannually throughout the term of the agreement.

(b) Reports are due 30 days after the end of each six-month period of performance commencing with the start of the agreement.

(c) Each semiannual report must include the following data on performance under the mentor-protégé agreement:

(1) Expenditures by the mentor.

(2) The number and dollar value of subcontracts awarded to the protégé.

(3) Description of developmental assistance provided, including milestones achieved.

(4) Impact of the agreement in terms of capabilities enhanced, certifications received, and/or technology transferred.

(d) Semiannually, the protégé must provide an independently developed progress report using the semiannual

report template, on the progress made during the prior six months by the protégé in employment, revenues, and participation in NASA contracts during each year of the Program participation term. The Protégé must also provide an additional post-agreement report for each of the two years following the expiration of the Program participation term.

(e) The protégé semiannual report required by paragraph (d) must be submitted separately from the Mentor's semiannual report submission.

(f) Reports for all agreements must be submitted to the NASA OSBP Mentor-Protégé Program Manager, the mentor's cognizant administrative contracting officer, and their cognizant center small business specialist.

(g) Templates for the semiannual report and the Post-Agreement report and guidance for their submission are available at: <http://www.osbp.nasa.gov>.

[74 FR 25672, May 29, 2009, as amended at 80 FR 12939, Mar. 12, 2015]

#### **1819.7213—1819.7214 [Reserved]**

#### **1819.7215 Solicitation provision and contract clauses.**

(a) The contracting officer shall insert the clause at 1852.219-77, NASA Mentor-Protégé Program, in:

(1) Any contract that includes the clause at FAR 52.219-9, Small Business Subcontracting Plan.

(b) The contracting officer shall insert the clause at 1852.219-79, Mentor Requirements and Evaluation, in contracts where the prime contractor is a participant in the NASA Mentor-Protégé Program.

### **Subpart 1819.73—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs**

#### **1819.7301 Scope of subpart.**

The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs were established and issued under the authority of the Small Business Act codified at 15 U.S.C. 631, as amended,

and the Small Business Innovation Development Act of 1982 (Pub. L. 97-219), codified with amendments at 15 U.S.C. 638, as amended. The Small Business Act requires that the Small Business Administration (SBA) issue SBIR and STTR Program Policy Directives for the general conduct of the SBIR/STTR Programs within the Federal Government. The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns (SBCs) in federally-funded research or research and development (R/R&D). Specific program purposes are to: Stimulate technological innovation; use small business to meet Federal R/R&D needs; foster and encourage participation by socially and economically disadvantaged SBCs, and by SBCs that are 51-percent owned and controlled by women, in technological innovation; and increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity and economic growth. Federal agencies participating in the SBIR/STTR Programs (SBIR/STTR agencies) are obligated to follow the guidance provided by the SBA Policy Directive. NASA is required to ensure its policies, regulations, and guidance on the SBIR/STTR Programs are consistent with SBA's Policy Directive. Contracting officers are required to insert the applicable clauses identified in 1819.7302 in all SBIR and STTR contracts.

[71 FR 61688, Oct. 19, 2006, as amended at 80 FR 12939, Mar. 12, 2015]

**1819.7302 NASA contract clauses.**

(a) Contracting officers shall insert the clause at 1852.219-80, Limitation on Subcontracting—SBIR Phase I Program, in all Phase I contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(b) Contracting officers shall insert the clause at 1852.219-81, Limitation on Subcontracting—SBIR Phase II Program, in all Phase II contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the

Small Business Innovation Development Act of 1982).

(c) Contracting officers shall insert the clause at 1852.219-82, Limitation on Subcontracting—STTR Program, in all contracts awarded under the Small Business Technology Transfer (STTR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982). Occasionally, deviations from this requirement may be approved. Any deviations from this requirement shall be approved in writing by the contracting officer after coordination with the Agency SBIR Program Manager/Coordinator.

(d) Contracting officers shall insert the clause at 1852.219-83, Limitation of the Principal Investigator—SBIR Program, in all contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982). Occasionally, deviations from this requirement may be approved. Any deviations from this requirement shall be approved in writing by the contracting officer after coordination with the Agency SBIR Program Manager/Coordinator.

(e) Contracting officers shall insert the clause at 1852.219-84, Limitation of the Principal Investigator—STTR Program, in all contracts awarded under the Small Business Technology Transfer (STTR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982). Occasionally, deviations from this requirement may be approved. Any deviations from this requirement shall be approved in writing by the contracting officer after coordination with the Agency SBIR Program Manager/Coordinator.

(f) Contracting officers shall insert the clause at 1852.219-85, Conditions for Final Payment—SBIR and STTR Contracts, in all Phase I and Phase II contract awarded under the Small Business Technology Transfer (STTR) Program and the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219

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1823.570-1

(The Small Business Innovation Development Act of 1982.)

[71 FR 61688, Oct. 19, 2006, as amended at 80 FR 12939, Mar. 12, 2015]

### PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55755, Oct. 29, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1822 appear at 66 FR 53547, Oct. 23, 2001.

#### Subpart 1822.1—Basic Labor Policies

##### 1822.103-5 Contract clause.

Insert the clause at 52.222-1, Notice to the Government of Labor Disputes, in all solicitations and contracts that exceed the simplified acquisition threshold.

[69 FR 21765, Apr. 22, 2004]

### PART 1823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

#### Subpart 1823.2—Energy and Water Efficiency and Renewable Energy

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1823.271 NASA Solicitation provision and contract clause.

#### Subpart 1823.5—Drug-Free Workplace

1823.570 Drug- and alcohol-free workforce.

1823.570-1 Definitions.

1823.570-2 Contract clause.

1823.570-3 Suspension of payments, termination of contract, and debarment and suspension actions.

#### Subpart 1823.70—Safety and health

1823.7001 NASA solicitation provisions and contract clauses.

#### Subpart 1823.71—Authorization for Radio Frequency Use

1823.7101 Contract clause.

AUTHORITY: 51 U.S.C. 20113(a).

SOURCE: 61 FR 55757, Oct. 29, 1996, unless otherwise noted.

#### Subpart 1823.2—Energy and Water Efficiency and Renewable Energy

##### 1823.271 NASA Solicitation provision and contract clause.

Insert the clause at 1852.223-76, Federal Automotive Statistical Tool Reporting, in solicitations and contracts requiring contractor operation of Government-owned or -leased motor vehicles, including, but not limited to, interagency fleet management system (IFMS) vehicles authorized in accordance with FAR 51.2.

[68 FR 43334, July 22, 2003]

#### Subpart 1823.5—Drug-Free Workplace

##### 1823.570 Drug- and alcohol-free workforce.

This section sets forth NASA requirements for mandatory drug and alcohol testing of certain contractor personnel under section 203, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; and Civil Space Employee Testing Act of 1991, Public Law 102-195, sec. 21, 105 Stat. 1616 to 1619.

[61 FR 55757, Oct. 29, 1996. Redesignated and amended at 69 FR 21765, Apr. 22, 2004]

##### 1823.570-1 Definitions.

As used in this subpart *employee* and *controlled substance* are as defined in FAR 23.503. The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of 1823.570 through 1823.570-3 and the clause at 1852.223-74.

*Employee in a sensitive position* means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any